

**UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF NEW YORK**

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SHIVA STEIN,

Plaintiff,

v.

MEDTRONIC PLC

Defendant.

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Civil Action No. 17-cv-05343-JBW-LB

**DECLARATION OF ALEXANDER ARNOLD GERSHON**

I, ALEXANDER ARNOLD GERSHON, hereby declare, under penalty of perjury under the laws of the United States of America that the following is true and correct:

1. I am a member of the bar of this Court and the State of New York and an inactive member of the bar of the State of Georgia. I am a partner in the firm of Barrack, Rodos & Bacine, and we are the attorneys for the plaintiff in this action.

2. The purpose of this declaration is to provide the Court with certain information that the Court requested during today's conference.

3. On August 28, 2017, Medtronic PLC ("Medtronic" or the "Company") filed a proxy statement in advance of the December 8, 2017 annual meeting.

4. Management Proposal 4 to this proxy statement requests that the shareholders amend and restate the Medtronic plc Amended and Restated 2013 Stock Award and Incentive Plan ("Restated 2013 Plan"), which would add 50 million new shares to be granted to participant in the Restated 2013 Plan. 50 million shares are worth to \$3.9 billion based on today's stock price of \$78 per share.

5. On September 12, 2017, Plaintiff brought this action requesting injunctive relief ahead of the December 8<sup>th</sup> meeting requiring Medtronic to comply with Item 10(a)(1) of Schedule 14A, 17 C.F.R. § 240.14a-101 (“Item 10(a)(1)”), which states that a proxy statement requesting stockholder approval of a compensation plan must: “Describe briefly the material features of the plan being acted upon, identify each class of persons who will be eligible to participate therein, indicate the approximate number of persons in each such class, and state the basis of such participation.”

6. Instead of providing this information, Medtronic only informed stockholders of the following regarding Eligibility and Participation.

**Eligibility and Participation**

The committee may select any or all of the following classes of persons to be granted awards under the plan: (i) members of our Board; (ii) officers of, employees of, and consultants to the Company and/or any of our subsidiaries; and (iii) individuals who have accepted offers of employment or consultancy from the Company, and/or from any of our subsidiaries; provided, however, that no grant will be effective prior to the date on which such individual’s employment or consultancy commences. We have 91,000 employees as of July 1, 2017, but awards will generally be limited to executive and management-level employees.

7. Today, October 11, 2017, this Court held a conference in this case during which counsel for Plaintiff and Defendant informed the Court that Medtronic had provided the information required by Item 10(a)(1) in a revised proxy statement (“Revised Proxy Statement”) filed with the SEC this morning. This Revised Proxy Statement is attached hereto as Exhibit 1. The relevant language complying with Item 10(a)(1) is found on page 71 and is as follows:

**Eligibility and Participation**

The committee may select any or all of the following classes of persons to be granted awards under the plan: (i) members of our Board or of the board of any of our subsidiaries; (ii) officers of, employees of, and consultants to the Company and/or any of our subsidiaries; and (iii) individuals who have accepted offers of employment or consultancy from the Company, and/or from any of our

subsidiaries; provided, however, that no grant will be effective prior to the date on which such individual's employment or consultancy commences. Following consultation with the committee's compensation consultant and the chief executive officer (with respect to awards not granted to him), the committee's selection of eligible participants in the 2013 Plan is generally based upon the committee's evaluation of, among other considerations, retention, reward and incentive needs to best encourage optimal outcomes for Company performance.

As of July 1, 2017, we had approximately 91,000 employees (which includes all of the full-time and part-time employees of the Company and its subsidiaries and approximately 80 officers of the Company and its subsidiaries), all of whom are eligible to participate in the 2013 Plan. To the extent permitted by applicable local law, all employees of the Company and its subsidiaries received awards under the 2013 Plan in connection with the Covidien acquisition, but awards will typically be limited to approximately 11,000 executive and management-level employees of the Company and its subsidiaries.

As of July 1, 2017, all 12 members of our Board, 11 of whom are non-employee directors, were eligible to receive awards under the 2013 Plan. Our current practice is to annually grant each non-employee director restricted stock unit awards with a grant date fair value of approximately \$175,000. We believe that this annual equity grant to our non-employee directors, in combination with our stock ownership guidelines, further aligns the interests of our non-employee directors with the interests of our shareholders.

It is currently Company practice not to grant awards to the following classes of individuals under the 2013 Plan: (i) individuals who have accepted offers of employment from the Company or one of its subsidiaries, but whose employment have not commenced, (ii) non-employee directors of any subsidiary of the Company and (iii) consultants of the Company and its subsidiaries (including individuals who have accepted consultancy offers from the Company or one of its subsidiaries, but whose consultancy have not commenced).

Most of the members of our subsidiaries' boards are executive and management-level employees of the Company or one of its subsidiaries and these board members are eligible to participate in the 2013 Plan as a result of their being employees of the Company or one of its subsidiaries and do not receive additional compensation from the 2013 Plan as a result of their membership on a subsidiary board. In certain countries, however, our subsidiaries are required by local law to have outside consultants or legal professionals serve as members of the subsidiary's board. These outside consultants or legal professionals are eligible to receive awards under the 2013 Plan, but, as stated above, it is not the Company's practice to grant awards to these individuals.

All, or virtually all, of our consultants are hired through third party agencies. Since the individuals are not direct consultants to the Company and its

subsidiaries, these individuals are ineligible to participate in the 2013 Plan. The Company and its subsidiaries engage only a de minimus number of consultants directly and, as stated above, it is not the Company's practice to grant awards under the 2013 Plan to these individuals.

8. As Plaintiff's counsel stated during the conference, Plaintiff submits that this language provides all the relief demanded in the complaint and has mooted the action.

9. Plaintiff's counsel remains available to provide any additional information this Court may require.

Dated: New York, New York  
October 11, 2017

/s/ A. Arnold Gershon  
ALEXANDER ARNOLD GERSHON